

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

**DOCKET NO. 2020-63-E**

IN RE: Bridgestone Americas Tire	)	
Operations, LLC,	)	
	)	
Petitioner,	)	<b>BRIDGESTONE AMERICAS</b>
v.	)	<b>TIRE OPERATIONS, LLC</b>
	)	<b>PRE-HEARING BRIEF</b>
Dominion Energy South Carolina,	)	
Inc.	)	
Respondent.	)	
	)	

The Bridgestone Americas Tire Operations, LLC's ("BATO") self-consuming Solar Array is not a parallel generator interconnected to Dominion Energy South Carolina's (DESC") system and neither net meters nor sells its full electrical output to DESC. Consequently, BATO is entitled to an order of the Public Service Commission ("Commission") holding that its 1.98 MW Solar Array is not subject to the South Carolina Generator Interconnection Procedures and requiring DESC to allow the operation of the Solar Array.

**BACKGROUND**

**The Public Service Commission's Enactment of Act 236.**

In 2014, the South Carolina General Assembly enacted Act 236 creating the South Carolina Distributed Energy Resource Program ("Act 236"). The South Carolina Generator

Interconnection Procedures were promulgated by Commission Order No. 2016-191, pursuant to S.C. Code Ann. § 58-27-460(A). The goal of Act 236 was “to promote the establishment of a reliable, efficient, and diversified portfolio of distributed energy resources for the State.” S.C. Code Ann. § 58-39-110. Distributed energy resource means demand and supply side resources to be deployed throughout an electrical utility’s system to meet the energy needs of customers served by the system. S.C. Code Ann. § 58-39-120(C).

A renewable energy facility subject to Act 236 is defined in its relevant part as:

(E) "Renewable energy facility" means a **facility that generates electric power** by the use of a renewable generation resource that was placed in service for use by or **to provide power to an electrical utility** after January 1, 2014.

S.C. Code Ann. § 58-39-120(E) (emphasis added). Only those renewable energy facilities that generate electric power for use by or to provide power to an electrical utility are subject to the provisions of S.C. Code Ann. § 58-27-460(A).

Act 236 further provides that a renewable energy facility is entitled to payment for its electric power at avoided cost. S.C. Code Ann. § 58-39-120(B). Act 236 established a net metering tariff to authorize the offset the cost of part or all of a customer generator’s electrical energy needs by the use of a meter designed to measure the difference in the electricity provided to the customer by the electrical utility and the customer’s generator for a tariff credit rate established by the Commission. S.C. Code Ann. §§ 58-40-10(C)(5) & (E); 58-40-20(A).<sup>1</sup>

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<sup>1</sup> Section 9 of Act 236 provides as follows:

"SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs." S.C. Code Ann. Section 58-39-130(E).

Thus, Act 236 created a program designed to encourage the development of solar energy applicable to solar generators that net meter or sell the full electrical output to the interconnecting utility.

**The South Carolina Generator Interconnection Procedures Are Promulgated by the Commission Pursuant to Act 236.**

In response to Act 236, the SCGIP was created by Commission Order No. 2016-191, issued on April 26, 2016. The SCGIP was proposed to the Commission for approval by a Joint Application of South Carolina Electric & Gas company, et al., for Approval of Revised South Carolina Interconnection Standard, in Docket No. 2015-361-E. The Commission approved the SCGIP standard as proposed by the South Carolina Electric and Gas company, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC. The joint application describes the proposed standard as:

The Proposed Standard would apply to any parallel non-utility generator requesting to interconnect to a utility's system, **and to either net meter or sell its full output** to the interconnecting utility. Joint Application of South Carolina Electric & Gas company, et al, for Approval of Revised South Carolina Interconnection Standard, in Docket No. 2015-361-E at page 5. (emphasis added).

The Commission in turn described the scope of the proposed SCGIP as follows:

Any parallel non-utility generator requesting to interconnect to a South Carolina utility's system **and to either net meter or sell its full output** to the interconnecting utility would interconnect under the Proposed Standard. Order No. 2016-191, dated April 26, 2016, at Pages 5-6. (emphasis added).

**BATO Constructs the 1.98 MW Solar Array at Its Aiken Facility.**

BATO's 1.98 MW solar array was constructed in October of 2018 at its Graniteville plant at a cost of approximately \$2.7 million with a capacity of 1.98 MW AC. The Solar Array

was designed by BATO's consultant and engineering team in accordance with DESC's technical specifications as required by the parties' contract for electric service. Cannon prefiled direct page 7, ll. 3-4.<sup>2</sup> The Solar Array will provide BATO with the opportunity to manage its electrical consumption and will contribute to reductions in the peak electrical demand. The Solar Array is designed to supplement about 1.5% of the Scope 2 electricity needed for the plant and will eliminate 1,400 metric tons of CO2 emissions annually. BATO estimates that when operational, the Solar Array would offset its electricity costs by \$20,000 per month. Cannon prefiled direct, page 7, ll. 9-18. The Solar Array is not interconnected to nor does it operate in parallel with DESC's system. The electricity generated by the Solar Array would not be net-metered or sold to DESC but consumed exclusively by BATO's operations at its Graniteville plant. Cannon prefiled direct page 6, l. 23 – page 7, l. 4

Because the Graniteville plant will consume all the electricity generated by the Solar Array, it will not interfere with DESC's equipment and facilities or its distribution and transmission system. Nevertheless, to further protect and safeguard DESC's equipment and facilities, DESC required BATO to install reverse power flow protection relays preventing electricity from being inadvertently transmitted from the Solar Array to DESC's equipment and

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<sup>2</sup> Prior to constructing the 1.98 MW solar array herein, BATO studied the possibility of constructing a solar array to be interconnected to and to be operated in parallel with SCE&G's (now DESC's) distribution and transmission system, but chose not to build the solar array after it missed the opportunity to participate in SCE&G's Bill Credit Agreement program. Cannon prefiled direct testimony page 6, ll. 17-22.

facilities. The Solar Array was constructed in compliance with all Federal, State, and local codes, the regulations of this Commission, and the General Terms and Conditions, Specifications for Service and Meter Installations set out in the contract for electric service between BATO and DESC approved by this Commission. Freeman prefiled direct page 6, ll. 5-19.

### ARGUMENT

The South Carolina General Assembly has expressed an unambiguous intent to increase the adoption and use of renewable energy sources. BATO, seeking to be a good steward of the South Carolina environment and a good corporate citizen, has pursued the construction and use of a Solar Array to produce a renewable energy source and reduce its reliance on the South Carolina's natural resources. From 2017 to the present, DESC has arbitrarily erected multiple roadblocks to BATO's use of the Solar Array. What's more, DESC's actions run counter to the stated intent of the General Assembly. As a result of DESC's legally unsupported and arbitrary conduct, BATO is entitled to an order directing DESC to approve the Solar Array for service.

**1) BATO's Solar Array Is Not Designed For Net Metering or Sale of Full Electrical Output and Is Therefore Not Subject to the SCGIP.**

The electricity generated by BATO's Solar Array is for the exclusive benefit of the BATO plant operations. The Solar Array was not installed for the purpose of net metering or the sale of its full output to DESC. Freeman prefiled direct page 8, ll.1-5; McGavran prefiled direct page 10, ll. 22 – page 11, l. 5. DESC does not dispute the fact that the Solar Array does not operate to net meter or for the sale of its full output to DESC. Because the SCGIP standards apply only to solar generators designed to net meter or sell their full output to the utility,

BATO's self-consuming Solar Array is not subject to the SCGIP. This fact alone is dispositive of all issues before this Commission.

DESC argues that if BATO's solar array is not subject to the SCGIP, it must be subject to FERC jurisdiction. Nothing could be further from the truth. DESC acknowledged in its Joint Application in Docket No. 2015-362-E that FERC jurisdiction extends to "[i]nterconnection of generators that **sell some or all of its [sic] electricity** to an entity other than the interconnecting utility." Joint Petition in Docket No. 2015-362-E at page 5, footnote 3.<sup>3</sup> (emphasis added). The Court of Appeals for the D.C. Circuit recently reaffirmed that Congress has left states with jurisdiction "over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter." Nat'l Ass'n of Regulatory Util. Commissioners v. Fed. Energy Regulatory Comm'n, No. 19-1142, 2020 WL 3886199, at 4 (D.C. Cir. July 10, 2020) (quoting 16 U.S.C. § 824(b)(1)). Of course, BATO's Solar Array neither net meters nor sells its full output and, therefore, as DESC explained in its Joint Application in Docket No. 2015-362-E, is not subject to FERC jurisdiction.

DESC also argues that if neither the SCGIP nor FERC apply, then there would be nothing governing the safe operation of BATO's Solar Array. This argument is not compelling. DESC's argument ignores the fact that BATO's Solar Array is governed by the parties' contract for electric service which is subject to the Commission's jurisdiction. The parties' contract for electric service was approved by this Commission in Orders No. 2009-102 and 2012-392. The

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<sup>3</sup> In its joint petition, DESC explained that FERC jurisdiction does not extend to interconnection of qualifying facility generators that sell their full output to the interconnecting utility consistent with Act 236.

contract includes provisions for the safekeeping and protection of DESCs' equipment and facilities. The record is replete with evidence of BATO's efforts to install protections for DESC's equipment and facilities.

This Commission has jurisdiction over the parties' contract for electrical service and is the arbiter the parties' duties and responsibilities with respect to that contract. BATO respectfully requests that the Commission use that authority to order DESC to abide by its responsibilities under the contract and allow BATO to place the Solar Array into operation.

**2) BATO's Solar Array Is Not A Parallel Non-Utility Generator and Consequently is Not Subject to SCGIP.**

The BATO Solar Array does not operate in parallel with DESC's utility system. It connects directly with the Plant on an existing internal feeder and is far removed electrically from the utility system. All load from the solar array is delivered to the facility directly without being routed through DESC's system. McGavran prefiled direct page 12, ll. 1-4. It is not connected in parallel with DESC and is a series connection with the plant. The Solar Array functions as a behind the meter resource which displaces load from the utility. McGavran prefiled direct Page 7, ll. 11-13. To protect and safeguard DESC's equipment and facilities, DESC required BATO to install reverse power flow protection relays preventing electricity from being inadvertently transmitted from the Solar Array to DESC. Freeman prefiled direct at page

6, ll. 8-11. As Witness McGavran testifies,

The solar array does not operate in parallel with the utility. That is obvious from the fact that it connects directly with the Plant on an existing internal feeder and is far removed electrically from the utility system. All load from the solar array is delivered to the facility directly.

McGavran prefiled direct page 12, ll. 1-4.

However, DESC argues that since both the utility and the Solar Array transmit electricity to BATO's plant at the same time, the Solar Array is said to operate in parallel with DESC. DESC's position leads to a result that is inconsistent with Act 236. Act 236 was intended to distributed energy resources for the State by encouraging renewable energy generation transmitted to electrical utilities either for net metering credit or the sale of the full output from the renewable generator. Any definition of parallel must be consistent with Act 236 and Order No. 2016-191. The Commission approved the interconnection standard consistent with the purpose of Act 236.<sup>4</sup> DESC's definition ignores the limitations of Act 236 and seeks to apply that Act to all renewable generation behind the meter, thereby impeding the development of renewable generation.

The Commission should stand firm against any further effort to limit renewable generation. BATO's self-consuming Solar Array connects directly to the BATO plant and does not transmit electricity to DESC's grid. Therefore, it is not a parallel non-utility generator covered by Order No. 2016-191.

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<sup>4</sup> SCE&G conceded this point in its joint application in Docket No. 2015-361-E. DESC now disavows its position giving rise to Order No. 2016-191 and advocates for the authority to regulate all renewable generation pursuant to Act 236.



### 3) BATO's Solar Array Does Not Interconnect To DESC's system.

BATO's Solar Array is not interconnected to DESC's grid. The Solar Array does not interconnect directly with the utility grid but operates inside the plant as a separate power generating resource and acts in effect, as a negative load that has the effect of displacing energy from the utility as noted above. With the implementation of the reverse power relaying function, the Solar Array has no chance of ever having any impact on the utility grid. Consequently, no utility interconnection agreement is required for safe system operation of this facility. McGavran prefiled direct page 10, ll. 22 – page 11, l. 5.

### 4) The 2019 Amendment to S.C. Code Ann. § 58-27-460(A) Exempts BATO's Self-Consuming Solar Array from the SCGIP.

Assuming for the sake of argument that the SCGIP promulgated under Order No. 2016-191 is applicable to BATO's Solar Array, by amending S.C. Code Ann. § 58-27-460(A) the General Assembly repealed the SCGIP standards and clearly exempted self-consuming solar arrays like BATO's from regulations under the revised Act. Accordingly, DESC should be ordered to permit BATO to operate its self-consuming Solar Array.

As set out above, Act 236 established South Carolina's distributed energy resource program. In 2019, the General Assembly passed the South Carolina Energy Freedom Act to encourage construction and operation of renewable energy sources like BATO's Solar Array and changed the scope of Commission authority:

It is the intent of the General Assembly to:

- 1) Build upon the successful development of solar generating capacity through Act 236 of 2014 to **continue enabling** market-driven, private investment in distributed energy resources across the State by reducing regulatory and administrative burdens to its customer installation and **utilization of onsite distributed energy resources** [.]

S.C. Code Ann. § 58-40-20 (2019) (emphasis added). The Energy Freedom Act became effective May 16, 2019.

The Energy Freedom Act repealed Commission permitting requirements for self-consuming energy facilities:

The [Commission] shall promulgate and periodically review standards for interconnection and parallel operation of generating facilities to an electric utility's distribution and transmission system **where interconnection is under the jurisdiction of the [PSC] pursuant to Title 16, Chapter 12, Subchapter II of the United States Code....**

S.C. Code Ann. §58-27-460(A)(1) (2019). (emphasis added). Title 16, Chapter 12, Subpart II, of the United States Code applies exclusively to “interconnections” to an electrical utility system for the purpose of “transmission of electricity in interstate commerce and for the sale of electric energy at wholesale in interstate commerce...” 16 U.S.C. §804. It is undisputed that BATO’s self-consuming Solar Array is not designed, built, or capable of delivering electric energy at wholesale in interstate commerce. Regardless of whether BATO’s self-consuming Solar Array was covered by Act 236 and the SCGIP regulations prior to the passage of the Energy Freedom Act, that amendment made it clear that such self-consuming solar arrays are not covered by the amended Act or its regulations going forward.

In South Carolina, repeal of a statute effectively repeals any regulation which is authorized by that statute. The repeal of a statute “operates retrospectively and has the effect of blotting it out as completely as if it had never existed and of putting an end to all proceedings under it.” S.C. Department of Natural Resources v. McDonald, 367 S.C. 531, 535, 626 S.E.2d 816, 818 (Ct. App. 2006) (quoting In re Terrence M., 317 S.C. 212, 214, 452 S.E.2d 626, 627 (Ct. App. 1994)). Nullification of a repealed statute logically extends to any law created by

operation of the repealed law, and “repeal of the authority to issue orders or regulations normally repeals those orders or regulations already issued.” 2 Am. Jur. 2d Administrative Law § 207 (citing City of Montpelier v. Barnett, 49 A.3d 120, 131 (2012)).

The McDonald decision addresses this very issue and is cited authority by other states and secondary sources. See City of Montpelier, 49 A.3d at 131; 1A Sutherland Statutory Construction § 23:1. Nature of a repealing act (7th ed.). The McDonald court held repeal of a statute referenced during the promulgation of the regulation operates as a repeal of the regulation itself, “notwithstanding the presence of other statutory authority that arguably could have supported the regulation...” 367 S.C. at 534, 626 S.E.2d at 817-18. Under the facts of the case, SCDNR promulgated a regulation prohibiting the baiting, hunting over bait, or taking wildlife over a baited area on wildlife management area lands, and baiting, hunting over bait, or taking over bait any “big game” on “other lands” within certain regions of the state. The cited statutory authority for the regulation permitted SCDNR to promulgate regulations to prescribe methods for taking game, but was limited to activity on wildlife management areas; though, another section of the South Carolina Code of Laws authorized SCDNR to regulate deer hunting on lands other than these management areas, SCDNR did not cite this section when promulgating the regulation. The court did not permit itself to rely on statutory authority not cited in the regulation, even though it did exist.

The 2019 statute preserved certain approvals to DESC for systems like the Solar Array. According to amendments to S.C. Code Ann. § 58-27-460(B), Dominion may request a “written approval” from BATO, but the written approval is not governed by SCGIP Regulations. Rather, it is governed by the parties’ contract for electric service. Moreover, since BATO has acted to

comply with all DESC requirements for the operation of the Solar Array, DESC cannot unreasonably withhold authority to operate the Solar Array from BATO.

When there has been the repeal of a statute, or the removal of portions by amendment, serving as the cited authority for a regulation, by operation of law the authority of that regulation should be deemed to have never existed and by extension the regulation cannot persist absent a savings clause in the statute or other cited authority that supports it. Consequently, S.C. Code Ann. § 58-27-460(A), as amended, is not applicable to BATO's Solar Array.

**5) Notwithstanding the Inapplicability of the SCGIP, The Commission Should Waive the Provisions of the SCGIP and Order DESC to Place the Solar Array into Service.**

Assuming for the sake of argument that the Commission determines that the SCGIP applies to BATO's Solar Array, BATO respectfully requests that the Commission waive the requirement for BATO to enter the queue and that DESC immediately undertake any study necessary to ensure that the Solar Array safeguard and protect DESC's equipment and facilities and authorize the operation of the Solar Array. It is undisputed that BATO's Solar Array will not operate to net meter or for the sale of its output to the utility. It is further clear from the record that the operation of the Solar Array will have no impact on DESC and that DESC need not conduct an interconnection study to determine the impact of the Solar Array on DESC's system.

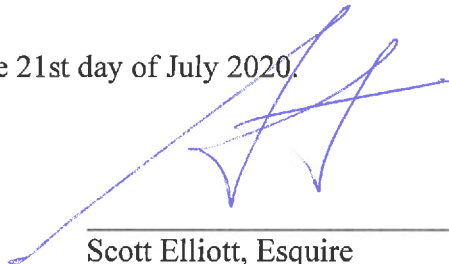
The Commission may waive compliance with its rules and regulations where compliance introduces unusual difficulty or where circumstances indicate that a waiver of the regulations is otherwise appropriate and not contrary to the public interest. S.C. Code Ann. Regs. 103-301.3. Here the Solar Array has been constructed at considerable expense and BATO has complied with every requirement to ensure that it has no impact on DESC. Because BATO's Solar Array does

not net meter nor sell power to the grid, no modifications will be required to DESC's distribution and transmission facilities and no other party in the queue will be prejudiced by permitting BATO to operate its Solar Array. In enacting Act 236 and the Energy Freedom Act, the General Assembly has determined that the encouragement of renewable generation is the public interest. Granting a waiver to finally permit BATO to operate a self-consuming Solar Array that has been forced by DESC to leave idle for years is in the public interest.

### CONCLUSION

BATO's self-consuming Solar Array is not a parallel generator interconnected to DESC's system and neither net meters nor sells its full output to DESC. Consequently, the Solar Array is not subject to the SCGIP and DESC should be ordered to allow the operation of the Solar Array. In constructing its Solar Array, BATO has installed every safety measure necessary to protect DESC's equipment and facilities, including those safety measures expressly required by DESC pursuant to the parties' contract for electric service. For the reasons set out above, BATO respectfully urges the Commission to order DESC to authorize BATO to operate its Solar Array so as to permit it to meet its energy needs and renewable goals.

Respectfully submitted, this the 21st day of July 2020.



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Scott Elliott, Esquire  
ELLIOTT & ELLIOTT, P.A.  
1508 Lady Street  
Columbia, SC 29201  
Telephone: 803-771-0555; Fax: 803-771-8010  
[selliott@elliottlaw.us](mailto:selliott@elliottlaw.us)

*Attorney for Petitioner*